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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 MARK ANTHONY MCKINNEY,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Deputy
11 Commissioner of Social Security for Operations,

12 Defendant.

Case No. C17-5584 JCC

**ORDER REVERSING AND
REMANDING THE CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS**

13 Plaintiff, Mark Anthony McKinney, seeks review of the denial of his applications for
14 Disability Insurance Benefits and Supplemental Insurance Security Income. Dkt. 1. Plaintiff
15 contends the ALJ harmfully erred by rejecting the opinions of David Widlan, Ph.D., and Victoria
16 McDuffee, Ph.D. Dkt. 14 at 1. As relief, plaintiff contends the Court should reverse the ALJ's
17 decision and remand the case for further proceedings. *Id.* The Commissioner disagrees arguing
18 the ALJ gave two valid reasons to reject the doctors' opinions. Dkt. 15 at 3. As discussed below,
19 the Court finds the ALJ harmfully erred, **REVERSES** the Commissioner's final decision and
20 **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. §
21 405(g).

22 **THE ALJ'S DECISION**

23 Utilizing the five-step disability evaluation process set forth in 20 C.F.R. §§ 404.1520(a),
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1 416.920(a), the ALJ found:

2 **Step one:** Plaintiff has not engaged in substantial gainful activity since the alleged onset
3 date of May 14, 2013.

4 **Step two:** Affective disorder, anxiety disorder, personality disorder, and polysubstance
5 abuse disorder are severe impairments.

6 **Step three:** These impairments do not meet or equal the requirements of a listed
7 impairment. *See* 20 C.F.R. Part 404, Subpart P. Appendix 1.

8 **Residual Functional Capacity:** Plaintiff can perform the full range of work at all
9 exertional levels. Due to mental disorders he can perform simple and detailed tasks, but
10 would have difficulty performing complex tasks consistently. He can work in jobs away
11 from the general public. He can have superficial contact with co-workers and supervisors
12 and is able to work in groups of 10 or fewer individuals.

13 **Step four:** Plaintiff can perform past relevant work as a treatment center attendant –
14 psych aide, truck driver, or construction worker.

15 **Step five:** Alternatively, plaintiff can perform other jobs that exist in significant numbers
16 in the national economy and is therefore not disabled.

17 Tr. 14-27. The ALJ's decision is the Commissioner's final decision because the Appeals Council
18 denied plaintiff's request for review. Tr. 1. The rest of the procedural history is not essential in
19 determining the outcome of the case and is thus not recounted.

20 DISCUSSION

21 The Commissioner's determination a claimant is not disabled will be upheld if the
22 findings of fact are supported by substantial evidence in the record as a whole and the proper
23 legal standards were applied. *Schneider v. Comm'r of the SSA*, 223 F.3d 968, 973 (9th Cir.
2000). Plaintiff challenges how the ALJ handled the opinions of examining psychologists David
Widlan, Ph.D., and Victoria McDuffee, Ph.D. Dkt. 14 at 1. The ALJ must provide clear and
convincing reasons supported by substantial evidence to discount the uncontradicted opinions of
these examining psychologists. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).

1 **A. Dr. Widlan**

2 In August 2013, Dr. Widlan performed a psychological evaluation on plaintiff and
3 diagnosed plaintiff with Bipolar Disorder II and cocaine dependence in early full remission. Tr.
4 238. Dr. Widlan opined plaintiff has adequate memory, concentration and social reasoning; he
5 can accept instruction from supervisors and he can complete activities of daily living. *Id.* The
6 doctor also found plaintiff “has been prone to inconsistent performance” and “would likely be
7 prone to absenteeism and have difficulty consistently negotiating basic social stressors.” *Id.*

8 The ALJ rejected Dr. Widlan’s opinions that plaintiff would be prone to inconsistent
9 performance; likely be prone to absenteeism; and have difficulty consistently negotiating social
10 stressors. The ALJ found these opinions are inconsistent with the mental status examination
11 findings the doctor made, and rely upon plaintiff’s discredited statements about his mental
12 problems. Tr. 24.

13 The Commissioner contends the ALJ properly rejected Dr. Widlan’s opinions for two
14 reasons. First the Commissioner argues the ALJ properly found the doctor’s opinions relied to a
15 large extent on plaintiff’s statements. Dkt. 15 at 3-4. Generally if a medical source’s opinions are
16 based “to a large extent” on a claimant’s self-reports and not on clinical evidence, and the ALJ
17 finds the claimant not credible, the ALJ may discount the source’s opinion. *Tommasetti v.*
18 *Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). However, when an opinion is not more heavily
19 based on a patient’s self-reports than on clinical observations, there is no evidentiary basis for
20 rejecting the opinion. *See Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). Additionally,
21 an ALJ does not provide clear and convincing reasons for rejecting an examining doctor’s
22 opinion by questioning the credibility of the patient’s complaints where the doctor does not
23 discredit those complaints and supports her ultimate opinion with her own observations. *Ryan v.*

1 *Comm'r of Soc. Sec.*, 528 F.3d 1194, 1199–1200 (9th Cir. 2008) (citing *Edlund v. Massanari*,
2 253 F.3d 1152, 1159 (9th Cir. 2001)).

3 Here, the ALJ's finding that Dr. Widlan's opinions were based on plaintiff's subjective
4 reporting is not supported by substantial evidence. Dr. Widlan did not discredit plaintiff's
5 complaints or indicate he disbelieved plaintiff. The doctor, of course, reported what plaintiff
6 stated during the examination but there is no indication that is all the examination entailed.
7 Rather, Dr. Widlan performed a standard professional psychological examination and the ALJ
8 did not find otherwise.

9 Moreover, a “[p]sychiatric evaluation[] may appear subjective, especially compared to
10 evaluation in other medical fields. Diagnoses will always depend in part on the patient's self-
11 report, as well as on the clinician's observations of the patient. But such is the nature of
12 psychiatry.” *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017). For this reason, the Court in
13 *Buck* noted “the rule allowing an ALJ to reject opinions based on self-reports does not apply in
14 the same manner to opinions regarding mental illness.” *Id.* Accordingly, the Court finds Dr.
15 Widlan's opinions are not merely reliant upon plaintiff's statements. Rather the record shows the
16 doctor's opinions reflect his assessment following a professional mental health examination. The
17 ALJ therefore harmfully erred in rejecting Dr. Widlan's opinions on the grounds they were based
18 upon plaintiff's discredited statements.

19 Second, the Commissioner argues the ALJ properly rejected Dr. Widlan's opinions
20 because they were inconsistent with his own clinical findings. Dkt. 15 at 3-4. The record does
21 not support this argument, or the ALJ's finding. Dr. Widlan opined plaintiff has adequate
22 memory, concentration and social reasoning, noting plaintiff “was able to complete MSE tasks.”
23 Tr. 238. The ALJ found Dr. Widlan's findings plaintiff has adequate social reasoning and can

1 take instruction from a supervisor are inconsistent with the doctor's opinion plaintiff would have
2 difficulty consistently negotiating social stressors. Substantial evidence does not support this
3 finding. Social reasoning and taking instruction from a boss are not the same thing as having
4 difficulty with social stressors. The fact one understands social situations or can take instruction
5 does not mean one can adequately deal with the stress of social situations. For instance, one may
6 understand the social situation regarding the work of an "automobile detailer" (a job the ALJ
7 found plaintiff could perform) but be unable to deal with the stressors of the job: pressure to
8 complete a job; keeping up with the number of cars to detail; fixing or reporting a mistake;
9 getting into disagreements with a boss or co-worker; etc. In sum, the ALJ erred in rejecting Dr.
10 Widlan's opinions that plaintiff is prone to inconsistent performance, and would likely be prone
11 to absenteeism and have difficulty consistently negotiating social stressors.

12 **B. Dr. McDuffee**

13 Dr. McDuffee performed a psychological evaluation of plaintiff in October 2013. She
14 diagnosed plaintiff with Mood Disorder, NOS – depression marked and anxiety moderate;
15 Polysubstance Dependence; (Bipolar Disorder, NOS) rule out; and (ADHD combined type) rule
16 out. Tr. 245. In assessing plaintiff's ability to perform work functions, the doctor opined plaintiff
17 was markedly impaired in his ability to perform activities within a schedule, maintain regular
18 attendance and be punctual; make simple work related decisions; communicate and perform
19 effectively in a work setting; and complete a normal work day and work week. Tr. 246. Dr.
20 McDuffee also found plaintiff was moderately impaired in his ability to perform routine tasks
21 without special supervision; adapt to changes in a routine work setting; be aware of normal
22 hazards; and set realistic goals and plan independently. *Id.*

23 The Commissioner argues the ALJ correctly rejected all of these limitations. The

1 Commissioner argues that, as with Dr. Widlan, the ALJ properly rejected Dr. McDuffee's
2 opinion as reliant on plaintiff's statements, and as inconsistent with her own clinical findings.
3 Dkt. 15 at 3-4. Substantial evidence does not support the ALJ's finding that Dr. McDuffee's
4 opinions are heavily based on plaintiff's discredited statements. Dr. McDuffee did not disbelieve
5 plaintiff, performed a professional psychological examination, administered some standard tests,
6 and made clinical observations including how plaintiff presented with "underlying anger,
7 hostility, aggression, argument," and his mood was "irritable," and his affect was "labile." Tr.
8 247. While the doctor noted "concerns regarding over reporting of symptoms" on the MMPI-2-
9 RF test, her opinions reflected direct clinical observations and other test results. Tr. 246, 249. On
10 the mental status exam, the doctor found plaintiff's thought process and content were not within
11 normal limits, noting "rumination." Tr. 247. Dr. McDuffee also found plaintiff's judgment and
12 insight were not within normal limits, noting "self sabotaging [behaviors]. Poor insight and
13 judgment." Tr. 248.

14 The ALJ also erred in finding Dr. McDuffee's opinions are inconsistent with other
15 evidence of record. Dkt. 15 at 3-4. The ALJ found plaintiff's "mini-mental status exam" was
16 "perfect," and thus undercuts Dr. McDuffee's opinions. Tr. 24. But that test result, only one of
17 the tests given, reflected only "no cognitive impairment" and did not underpin the mood,
18 emotional, and personality disorders Dr. McDuffee diagnosed based on observation, testing,
19 clinical interview, and records review. Tr. 246, 249. The ALJ further found Dr. McDuffee failed
20 to sufficiently explain her opinions and that the basis of the opinions are not evident from the
21 mental status exam findings. Tr. 24. These findings stray from the record. As noted above, Dr.
22 McDuffee made clinical observations indicating plaintiff's complete mental status exam was far
23 from "perfect" and instead that he suffered from abnormal thought process and content, and

1 abnormal insight and judgment. The Court accordingly concludes the ALJ's finding is not
2 supported by substantial evidence.¹

3 The Court further concludes the ALJ's rejection of portions of Drs. Widlan's and
4 McDuffee's opinions is not harmless. In determining a claimant's RFC, an ALJ must assess all
5 the relevant evidence, including medical reports to determine what capacity the claimant has for
6 work. See 20 C.F.R. § 416.945(a). Similarly, hypothetical questions that an ALJ poses to a VE to
7 determine what work a claimant can perform "must include 'all of the claimant's functional
8 limitations, both physical and mental' supported by the record." *Thomas v. Barnhart*, 278 F.3d
9 947, 956 (9th Cir. 2002) (quoting *Flores v. Shalala*, 49 F.3d 562, 570–71 (9th Cir. 1995)). This
10 did not occur here because the ALJ rejected some of the limitations assessed by the doctors in
11 assessing plaintiff's RFC and in posing questions to the vocational expert.

12 CONCLUSION

13 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this
14 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
15 405(g). On remand, the ALJ shall reassess the opinions of Drs. Widlan and McDuffee, develop
16 the record and reassess plaintiff's RFC as needed and proceed to steps four and five as
17 appropriate.

18 DATED this 13th day of June, 2018.

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22 John C. Coughenour
UNITED STATES DISTRICT JUDGE

23 ¹ The Court need not address whether the ALJ properly rejected GAF scores assessed by Drs.
McDuffee and Widlan because plaintiff has not assigned error to the ALJ's finding.
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